REMARKS/ARGUMENTS

Applicant would like to thank the Examiner for the careful consideration given the present application to this point. After reviewing the application in light of the Office action, applicant has amended claim 1 simply to more explicitly recite limitations that were already inherently present therein. Applicant respectfully submits that the present application is in a condition for allowance, regardless of the amendments to claim 1, in view of the following remarks.

Claim Rejections Under Nonstatutory Obviousness-Type Double Patenting

To summarize the issues raised in the Office action necessitating this response, claims 1-30 and 83-86 are the only claims currently under consideration. All of these claims stand rejected under the doctrine of nonstatutory, obviousness-type double patenting as being unpatentable over claims 39, 45, 50, 64-68, 76-82, 85, 90, and 92-97 of U.S. Patent No. 6,884,065. However, as applicant discusses below, amended claim 1 is sufficiently distinct from the subject matter claimed in the cited claims of the '065 patent to be patentable for the limitations set forth therein.

Nonstatutory, obviousness type double patenting rejection is "based on a judicially created doctrine grounded in public policy and which is primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinguishing from claims in a first patent." M.P.E.P. §804. "A rejection based on nonstatutory double patenting is based on a judicially created doctrine grounded in public policy so as to prevent the unjustified or improper timewise extension of the right to exclude granted by a patent. M.P.E.P. §804(II)(B)(1) (citing: *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re White*, 405 F.2d 904, 160 USPQ 417 (CCPA 1969); *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968); *In re Sarett*, 327 F.2d 1005, 140 USPQ 474 (CCPA 1964)).

A double patenting rejection of this type is "analogous to the nonobviousness requirement of 35 U.S.C. §103" except that the patent principally underlying the double patenting rejection is not considered prior art. M.P.E.P. §804(I)(B)(1) (quoting *In re Braithwaite*, 379 F.2d 594, 154 USPQ 29 (CCPA 1967)). Therefore, the analysis employed in an obviousness-type double patenting rejection parallels the guidelines for analysis of a 35 U.S.C. §103 obviousness determination. *In re Braat*, 937 F.2d 589, 19 USPQ2d 1289 (Fed. Cir. 1991); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985). Thus,

although the mere provision of adjustability to a previously claimed feature in the '065 patent alone may involve only routine skill in the art as noted in the Office action, *In re Stevens*, 212 F.2d 197, 101 USPQ 284 (CCPA 1954), the addition of a novel feature wholly absent from the subject matter claimed in the '065 patent that gives the invention claimed in the present application a distinct advantage prevents a finding of obviousness. M.P.E.P. §2143.03 (To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)).

In the present application, claim 1 has been amended to include a flexible gas hose interposed between the regulator and the gas valve adapted to receive fuel from an associated fuel supply. So providing the flexible hose to such a portable heater provides the advantage of simplifying replacement of the fuel supply provided to the portable heater. This feature is entirely absent from the cited claims in the '065 patent, and is also omitted from the specification of the '065 patent. Thus, upon expiration of the '065 patent, nothing in amended claim 1 of the present application would improperly extend the term of the '065 patent by protecting subject matter lacking this flexible gas hose.

Furthermore, the absence of the flexible gas hose of amended claim 1 in the present application from the subject matter in the cited claims of the '065 patent, as well as the specification of the '065 patent, would preclude a finding that claim 1 is obvious in view of the '065 patent. And neither the problem solved nor any other motivation to modify the '065 patent is disclosed therein to justify a finding that the addition of the flexible gas hose would have been obvious to one of ordinary skill in the art.

Accordingly, applicant respectfully submits that claim 1, as amended, is patentably distinct from the '065 patent and the subject matter of the claims recited therein to ensure against an improper extension of the '065 patent.

The remaining claims in the present application are allowable for the limitations therein and for the limitations of the claims from which they depend.

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any fees resulting from this communication, please charge same to our Deposit Account No. 501210, referencing our Docket No. 21384.44100.

Respectfully submitted,
BROUSE McDOWELL

By: _____

Donald J. Firca, Jr., Reg. No. 48,140
388 South Main Street
Suite 500
Akron, OH 44311-4407
Tel. 330-535-5711
Fax. 330-253-8601

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Enclosure: Revocation of power of Attorney, New Power of Attorney, and Change of Correspondence Address

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